

REMARKS

The Applicant would like to thank the Examiner and her Supervisor, Ardin Marschel, for the gracious telephonic interview conducted with the Applicant's undersigned representative on August 28, 2007. During that interview, the bases for the rejections set forth in the Office Action dated July 19, 2007 were discussed, in particular the basis for the rejection under 35 U.S.C. §102(a) in view of a cited website ("Oculax™, copyright 3T Herbtech Inc. 2000").

Claims 1, 2, 4-6, 12, 14, 17, 19, and 20 are currently pending in the present application. No listing of claims is provided in this communication because no claim changes, claim cancellations, or new claims are requested at this time.

Rejection under 35 U.S.C. § 102(a)

Claims 1-2, 4-6, 12, 14, 17, and 19-20 were rejected under 35 U.S.C. §102(a) as being anticipated by a website printout describing the OCULAX product, in particular by the disclosure in the printout that "since January to November of 2002, Oculax has been clinically experimented by 3T Manufacturing (USA) Inc." In response, the Applicant is submitting herewith a second Declaration of Dr. Liqin Sun and a second Declaration of Mr. Jing Tang Liu which present evidence that the cited website printout is not prior art under 35 U.S.C. §102(a).

Dr. Sun, the sole inventor of the present invention, states in her declaration that she performed the clinical experiments referred to in the cited website printout relating to the Oculax product. She was responsible both for treating the patients involved in the study and for gathering the data reported in this document. Moreover, the OCULAX patches used in this clinical research were produced by 3T Manufacturing (USA) Inc. using information provided by Dr. Sun. This is corroborated by the Chief Executive Officer of 3T Manufacturing (USA) Inc. at the time of the reported clinical research, Mr. Jing Tang Liu, who states in his declaration that information concerning the OCULAX patches was not known to 3T Manufacturing (USA) Inc. prior to being disclosed to the company by Dr. Sun.

Section §102(a) of the patent statute states that a person shall be entitled to a patent unless “the invention was known or used *by others* in this country, or patented or described in a printed publication in this or a foreign country, *before the invention thereof by the applicant* for patent...” (emphasis added). In view of the fact that the present inventor conducted the studies reported in the cited website printout and that the present invention was not known by 3T Manufacturing (USA) Inc. prior to Dr. Sun’s invention of the subject matter of the present application, the cited website printout does not present evidence that the present invention was “known or used *by others* in this country ... *before the invention thereof by the applicant* for patent.” Since the OCULAX website printout reports research performed by the inventor of this application, this document also does not constitute information “described in a printed publication ... *before the invention thereof by the applicant* for patent.”

The Applicant respectfully submits that the evidence submitted herewith rebuts any prima facie showing that the cited website printout constitutes prior art under 35 U.S.C. §102(a). It is therefore respectfully requested that the rejection of claims 1-2, 4-6, 12, 14, 17, and 19-20 under 35 U.S.C. §102(a) be withdrawn.

No Printed Materials

Although no rejection of the present application under 35 U.S.C. §102(b) has been made of record, during the telephonic interview conducted on August 28, 2007 the Examiner requested confirmation that no printed materials concerning the OCULAX acupoint patches were distributed in connection with the study reported in the website printout on which the rejection under 35 U.S.C. §102(a) was based. The Declaration of Dr. Liqin Sun submitted herewith confirms that no such printed materials were distributed.

Even if such written materials existed, they would not be prior art under §102(b). The reported experiments began in January 2002, which is less than one year prior to the priority date of the present application, which claims priority to Application No. 60/406,557 filed on August 27, 2002.

With respect to the status of the OCULAX website printout as prior art under 35 U.S.C. §102(b), the Applicant respectfully points out that the website refers to data from November 2002, and therefore by its own terms cannot be dated earlier than this. The priority date of the present application, August 27, 2002, is prior to this date. In view of this, the OCULAX website printout cannot be prior art under 35 U.S.C. §102(b).

Rejection under 35 U.S.C. § 103(a)

Claims 1-2, 4-6, 12, 14, 17, and 19-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the OCULAX website printout in view of U.S. Patent No. 4,858,604 to Konishi. For the reasons set forth above, the OCULAX website printout cited in the Office Action does not constitute prior art to the present application. With respect to the Konishi reference, as stated in the Applicant's prior response dated April 26, 2007, this reference does not teach or suggest that a bandage can comprise a dried, water-soluble filtrate of each of *Ligusticum wallichii*, *Salvia miltiorrhiza*, *Angelica sinensis*, and *chrysanthemum*, as recited in claim 1, and therefore does not suggest the presently claimed invention. Any prima facie case of obviousness in view of the Konishi patent is in any case overcome by the unexpected results disclosed in the Declaration of Liqin Sun under 37 CFR § 1.132 submitted previously by the Applicant, which showed that the presently claimed patch benefits patients suffering from myopia, presbyopia, and other eye conditions.

The Applicant therefore respectfully submits that neither the Konishi patent nor any other art of record teaches or suggests the patch recited in claim 1, and that any prima facie showing of obviousness is overcome by the unexpected benefits that have been found by the Applicant in the treatment of eye conditions with the claimed patch. In view of the foregoing, the Applicant respectfully requests that the rejection of claims 1-2, 4-6, 12, 14, 17, and 19-20 under 35 U.S.C. § 103(a) be withdrawn.

Conclusion

The Applicant believes that all pending claims, claims 1, 2, 4-6, 12, 14, 17, 19, and 20, are in condition for allowance, and a Notice of Allowance is respectfully requested. If, however, there remain any issues which can be addressed by telephone, the Examiner is encouraged to contact the undersigned at the telephone number listed below.

Please charge any fees due in connection with this Amendment or credit any overpayment to Deposit Account No. 19-2090.

Respectfully submitted,

SHELDON MAK ROSE & ANDERSON

Date: October 17, 2007

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